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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

BELLE ROSE CLAREMONT, LLC  
et al.,

Plaintiffs and Appellants,

v.

KARLE FRIED,

Defendant and Respondent.

A159836

(Alameda County  
Super. Ct. No. RG18898140)

Plaintiffs Belle Rose Claremont, LLC (Belle Rose) and Stonewall Holabird, LLC served defendant Karle Fried with a 60-day notice increasing her monthly rent. In response, Fried filed a petition with the City of Oakland Rent Adjustment Program contesting the notice and alleging various habitability issues. The petition stated there were six units on the property. Fried also allegedly made various statements to third parties regarding plaintiffs' ability to sell the property. As a result of the petition and these statements, plaintiffs sued Fried for slander of title, among other causes of action. Fried filed a special motion to strike the slander of title claim pursuant to Code of Civil Procedure section 425.16 (anti-SLAPP<sup>1</sup> statute).

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<sup>1</sup> “ ‘SLAPP’ is an acronym for ‘strategic lawsuit against public participation.’ ” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381, fn. 1.)

The trial court granted the motion as to the petition and any statements made by Fried to City of Oakland (Oakland) employees, but denied the motion as to statements made by Fried to other third parties.

On appeal, plaintiffs contend the trial court erred because the petition and statements are not protected speech. Plaintiffs further assert the record contains sufficient evidence to meet their burden of proof on the slander of title cause of action. We disagree and affirm the order.

## **I. BACKGROUND**

Fried is a tenant on property purchased by plaintiffs. The cottage in which Fried resides is part of three adjacent parcels of land. One parcel contains a large, multi-unit building (7361 Claremont) while another contains Fried's cottage (7363 Claremont). 7363 Claremont was legally subdivided and separately sold in 1928. 7361 Claremont was legally subdivided and sold in 1929.

Despite her cottage residing on a separate parcel from that of the multi-unit building, Fried's lease identified her address as "2646 Claremont, Apt. #6." The 2646 Claremont address was the prior address for 7361 Claremont. At that time, 7361 Claremont and 7363 Claremont also had the same assessor parcel number (APN).

In connection with the sale of the three parcels to plaintiffs, Fried executed a tenant estoppel certificate. That certificate identified her address as "7361 Claremont Ave. . . . [¶] AKA 2646 Claremont Ave., #6." It represented there were no existing agreements apart from the lease and "Tenant has no defenses, off-sets or counterclaims to the payment of rent or other amounts due from Tenant to Landlord under the Lease."

Plaintiffs subsequently purchased the three parcels. Following the purchase, Fried executed an addendum to her lease with the property

management company. The addendum renewed her lease for a one-year period with a slight rent increase. Both the addendum and the “Thirty-Day Notice of Change of Monthly Rent” identified Fried’s address as “6U” at either “7361 Claremont Ave” and/or “2646 Claremont Ave.”

A disagreement arose between the parties when plaintiffs indicated an intent to sell some of the parcels. Fried initially informed plaintiffs she wished to purchase 7363 Claremont, but she was unable to obtain the necessary funding. Fried then asserted the parcels could not be sold separately. Kristin Personett, a member of Belle Rose, and her real estate agent provided Fried with a parcel map of the three lots, indicating they were separate parcels. However, Fried continued to assert through counsel the parcels were not legally separate, stating, “It does not appear that the property has been split according to Oakland’s zoning law, and it is not clear to me that such a change is even possible on this parcel.” In response, plaintiffs directed Fried’s counsel to the 1920’s deeds creating separate parcels. Plaintiffs also obtained a certificate of compliance and proceeded with obtaining a new APN for 7361 Claremont.

In October 2017, plaintiffs served Fried with a “Sixty-Day Notice of Change of Monthly Rent.” The notice identified Fried’s address as “2646 Claremont Avenue, #6.” Despite the one-year lease renewal executed in September 2017, which set forth a rental amount of \$959.67, this notice stated Fried’s rent would increase to \$2,250.

In November 2017, Fried filed a petition with the Oakland Rent Adjustment Program (hereafter Rent Board) challenging the rent increase notice. The petition identifies her address as “2646 Claremont Ave., Unit 6” and answers “6” in response to the question: “Number of units on the property.” At the time she submitted the petition, she believed the cottages

and the multi-unit building were on the same property. The petition also identified various habitability issues and asserted those issues should reduce her rent by 25 percent.

In March 2018, Fried spoke with an Oakland zoning supervisor. At that time, she learned the multi-unit building and her cottage were on different parcels. She also discovered her address was changed to 7363 Claremont. She did not attempt to amend her petition or inform the Rent Board of this information.

Plaintiffs filed a complaint against Fried, alleging trespass, slander of title, and tortious interference with prospective economic gain.<sup>2</sup> Plaintiffs alleged Fried “has engaged in a wrongful campaign of intimidation, threat, harassment, and disparagement to prevent the sale of 7361 Claremont,” sought compensation for the expense and delay caused by Fried’s conduct, and requested injunctive relief to prevent any further conduct by Fried that would interfere with a potential sale of the property. As particularly relevant to this appeal, the slander of title claim asserted Fried “has wrongfully told employees of the City of Oakland and others that Plaintiffs have illegally subdivided the parcel containing 7361 Claremont from the parcel containing 7363 Claremont.”

In response, Fried filed a special motion to strike the slander of title claim (anti-SLAPP motion). She asserted she was entitled to investigate whether her cottage was on a legally separate parcel from the multi-unit building and the other cottage to determine whether a noticed rent increase was legal under rent control ordinances. Fried asserted these questions were

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<sup>2</sup> An amended complaint added claims for promissory estoppel, breach of contract, and negligent misrepresentation. However, those causes of action are not relevant to this appeal.

matters of public interest. Fried further contended plaintiffs could not demonstrate a probability of success because she did not inform any Oakland employees the property had been illegally subdivided.

Plaintiffs opposed the motion, arguing Fried's statements to various third parties, such as real estate agents, the property manager, an attorney, and a contractor, regarding the "illegal" sale of 7361 Claremont and her right to be on that property were not protected speech. Plaintiffs asserted her statements had no connection to an official proceeding and were merely designed to interfere with any sale of the property. Plaintiffs further alleged they had demonstrated a probability of prevailing because the record indicates Fried claimed 7361 Claremont was illegally subdivided, and plaintiffs incurred the expense of obtaining a certificate of compliance to counter her statements.

The trial court granted in part Fried's anti-SLAPP motion. It concluded Fried's act of filing a petition with the Rent Board and contacting Oakland's building department to request an inspection for potential code violations were protected activities. The court also concluded plaintiffs failed to demonstrate any statements by Fried to those entities were "false, malicious and without privilege," and it thus struck such allegations. However, the court concluded statements to third parties (i.e., not the Rent Board or Oakland) were unprotected activity and denied the motion as to such statements. Accordingly, the court struck the phrase "employees of the City of Oakland" from the slander cause of action.

Plaintiffs timely appealed the court's order granting Fried's anti-SLAPP motion.

## II. DISCUSSION

### A. *Standard of Review*

Code of Civil Procedure section 425.16, subdivision (b)(1) provides: “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” A motion under this provision is commonly known as an “anti-SLAPP” motion. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732.) The purpose of such motions is “to provide ‘for the early dismissal of unmeritorious claims filed to interfere with the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.’ [Citation.] The statute is to ‘be construed broadly.’” (*Simmons v. Bauer Media Group USA, LLC* (2020) 50 Cal.App.5th 1037, 1043 (*Simmons*).)

“ ‘We review de novo a trial court’s decision on an anti-SLAPP motion. [Citation.] The anti-SLAPP statute requires a two-step process: “At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them . . . . If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff’s showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken.” [Citation.] In

making these determinations the court considers “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” ’ ’ (Simmons, supra, 50 Cal.App.5th at p. 1043.)

### ***B. The Anti-SLAPP Motion***

Plaintiffs contend Fried’s statements regarding the severability of 7361 Claremont were not protected speech, but rather were false, malicious, and unrelated to any official proceedings. Plaintiffs further assert even if Fried’s statements were protected speech, they have a substantial probability of prevailing on the merits.

#### ***1. Prong One—Protected Speech***

“The anti-SLAPP statute applies only to a ‘cause of action . . . arising from’ acts in furtherance of the defendant’s constitutional right of petition or free speech in connection with a public issue . . . .” (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 186.) Among other types of communications, the anti-SLAPP statute protects “any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.” (Code Civ. Proc., § 425.16, subd. (e)(1).) The anti-SLAPP statute protects the right to petition before both courts *and* administrative bodies. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 (*Briggs*) [“ ‘ “[t]he constitutional right to petition . . . includes the basic act of filing litigation or otherwise seeking administrative action” ’ ”].)

Plaintiffs first assert the slander of title claim relates only to Fried’s statements regarding the illegality of selling 7361 Claremont separately from 7363 Claremont. But the record indicates Fried did not make such statements to any Oakland employees, and the trial court did not strike the cause of action for any such statements made to other third parties.

Plaintiffs next assert “[t]he only slander at issue is that contained in the November 14, 2017 rent board petition”—i.e., the reference to six units on the property and Fried’s identification of habitability issues with her cottage. While plaintiffs contend a rent board petition is not privileged, they cite no authority supporting their argument. To the contrary, the constitutional right to petition includes the filing of administrative proceedings. (*Briggs, supra*, 19 Cal.4th at p. 1115.) Fried’s petition to the Rent Board is thus protected.

Nor can we conclude Fried’s statement that the property contained six units was false and malicious. Her cottage had long been identified as apartment No. 6 of 2646/7361 Claremont. In fact, plaintiffs’ notice of rent increase, which triggered Fried’s petition to the Rent Board, listed her address as “2646 Claremont Avenue, #6.” While plaintiffs argue Fried has not taken steps to “withdraw her slander,” plaintiffs offer no evidence that Fried has continued to assert this position since being informed by Oakland that the parcels are legally separate.<sup>3</sup>

Likewise, whether plaintiffs have a valid defense to Fried’s claims of habitability issues is an issue for prong two of the anti-SLAPP analysis. Our task for prong one of the analysis is to consider “whether a defendant has made a prima facie showing that activity underlying a plaintiff’s causes of action is statutorily protected, ‘not whether it has shown its acts are ultimately lawful.’ [Citation.] . . . ‘To conclude otherwise would effectively

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<sup>3</sup> To the extent plaintiffs are asserting some sort of publication privilege issue, they have not cited any authority indicating how the privilege may or may not apply. Accordingly, any such argument is waived. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.”].)



shift to the defendant a [merits] burden statutorily assigned to the plaintiff.’ ” (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 425–426.) In fact, plaintiffs even concede “a priv[i]lege would likely protect her speech” regarding her rental unit.

Accordingly, we conclude Fried’s petition to the Rent Board and any statements contained therein constitute protected speech under the anti-SLAPP statute.

## **2. Prong Two—Prima Facie Probability of Success**

Because Fried made a prima facie showing the slander of title claim arose from protected activity, the burden now shifts to plaintiffs to demonstrate the claim is legally sufficient and factually substantiated. (*Simmons, supra*, 50 Cal.App.5th at p. 1043.)

Our review of plaintiffs’ evidentiary showing, measured against the probability of prevailing standard, leads us to conclude they did not carry their burden in this regard. In evaluating a plaintiff’s probability of prevailing, we apply a “summary-judgment-like” test (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714), accepting as true the evidence favorable to the plaintiff and evaluating the defending party’s evidence only to determine whether it defeats the plaintiff’s evidence as a matter of law (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 823, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5).

Plaintiffs assert the record “support[s] each element of” the slander cause of action. They argue there has been “a publication to many persons” and no privilege applies because “it does not relate to her Cottage, but to the ability to sell 7361 Claremont.” But, as discussed previously, the record does not demonstrate Fried made any statements regarding the ability to sell 7361 Claremont to either the Rent Board or other Oakland employees. The only

evidence cited by plaintiffs is the declaration of Steve Davis, which mentions Fried's statement on a neighborhood social networking platform, Nextdoor.com, that plaintiffs are "separating and selling the main house from the two cottages." But this statement does not claim plaintiffs are unable to separately sell 7361 Claremont. Nor was it made to the Rent Board or Oakland employees. Rather, Fried's statement was aimed at other third parties, and the trial court did not strike the slander claim as to such statements.

Plaintiffs likewise have not demonstrated the Rent Board petition meets their burden of proof on this prong. For the reasons discussed above, we are skeptical of plaintiffs' argument that the petition asserts 7361 Claremont is part of an illegal subdivision and cannot be sold separately from 7363 Claremont. (See part II.B.1., *ante*.)

Moreover, the petition is subject to the litigation privilege. The litigation privilege protects a publication or broadcast made "In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure," subject to certain exceptions not relevant here. (Civ. Code, § 47, subd. (b); *Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 919.) "Moreover, "[t]he litigation privilege is not limited to the courtroom, but encompasses actions by administrative bodies and quasi-judicial proceedings. [Citation.] The privilege extends beyond statements made in the proceedings, and includes statements made to initiate official action." ' ' ' (Dean v. Friends of Pine Meadow (2018) 21 Cal.App.5th 91, 108.)

Finally, plaintiffs argue for the first time in their reply brief that “Malice is the only issue in this appeal” and contend the record demonstrates Fried acted with malice so as to overcome her anti-SLAPP motion. However, plaintiffs’ opening brief raises no argument about malice apart from a single footnote that fails to cite any supporting authority. Because this argument was not raised in their opening brief, it is waived. (See *Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 427–428.) Moreover, the basis for plaintiffs’ malice argument is unclear. For statements such as the petition, which fall under Civil Code section 47, subdivision (b), “ ‘[t]he litigation privilege is absolute’ ” and applies “ ‘regardless whether the communication was made with malice or the intent to harm.’ ” (*Dean v. Friends of Pine Meadow, supra*, 21 Cal.App.5th at p. 107.) Accordingly, all of Fried’s statements in the Rent Board petition are privileged, and plaintiffs cannot rely on them to support their slander claim.<sup>4</sup>

### III. DISPOSITION

The order granting in part Fried’s special motion to strike the slander of title cause of action is affirmed. Respondent Karle Fried may recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

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<sup>4</sup> Plaintiffs fail to cite any authority to support their position that a rent board petition is not privileged. Nor do they cite any authority to support their assertion that a rent board’s publication of such petitions or the need to disclose the petition to potential purchasers undermines the privilege. To the contrary, “many cases have held that the official proceeding privilege applies to a communication intended to prompt an administrative agency charged with enforcing the law to investigate or remedy a wrongdoing.” (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 362; *Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1303 [“The privilege is based on ‘[t]he importance of providing to citizens free and open access to governmental agencies for the reporting of suspected illegal activity.’ ”].)

MARGULIES, ACTING P. J.

WE CONCUR:

HUMES, P. J.

BANKE, J.

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*Belle Rose Claremont, LLC v. Fried*